

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1689

6 By: Russ

7 COMMITTEE SUBSTITUTE

8 An Act relating to mortgages; providing for court  
9 proceeding in certain foreclosure actions; specifying  
10 certain conditions and risks; requiring sheriff to  
11 make certain inspection of property; requiring  
12 sheriff post or serve notice of hearing; providing  
13 for compensation of sheriff; requiring return of  
14 inspection be mailed; specifying information to be  
15 included in inspection document; providing for notice  
16 publication; specifying information to be included in  
17 motion; setting time for hearing; directing testimony  
18 to be given at hearing; providing guidelines for  
19 court; requiring inventory of personal property;  
20 authorizing plaintiff to take possession and secure  
21 property; providing for procedure to vacate or set  
22 aside order at any time; specifying order shall not  
23 alter other rights or remedies for the parties;  
24 providing for codification; and providing an  
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 302 of Title 46, unless there is  
created a duplication in numbering, reads as follows:

A. Upon commencement of a suit, action or proceeding to  
foreclose or otherwise enforce the remedies in any mortgage,

1 contract for deed or deed of trust in a court of competent  
2 jurisdiction, if the plaintiff mortgagee believes, knows, or has  
3 reason to know, that the subject property is abandoned or vacated  
4 and, as a result of such abandonment:

5 1. Physical deterioration and devaluation of the property is  
6 occurring or has occurred;

7 2. There exists a risk to the health, safety or welfare of the  
8 public, or any adjoining or adjacent property owners, due to  
9 potential or actual acts of vandalism, loitering, criminal conduct  
10 or the physical destruction or deterioration of the property; or

11 3. There exists a risk of additional legal process for  
12 violation of law, ordinance, unpaid taxes or accrual of liens,  
13 the plaintiff mortgagee may seek a court order to protect and  
14 preserve the property pending the disposition of the suit, action or  
15 proceeding before the court.

16 B. A motion to protect and preserve an abandoned or vacated  
17 property subject to a suit, action or proceeding to foreclose or  
18 otherwise enforce the remedies in the mortgage, contract for deed or  
19 deed of trust shall be filed and heard in accordance with court  
20 rules and statutory civil procedures for motions. The court shall  
21 not deny a plaintiff mortgagee an order to protect and preserve a  
22 property subject to foreclosure or enforcement of remedies in the  
23 mortgage, contract for deed or deed of trust, unless the defendant  
24 named in the litigation appears in person or through legal counsel

1 at the motion hearing and demonstrates to the satisfaction of the  
2 court that the subject property is not abandoned or vacated, and is  
3 not at risk of deterioration, devaluation, or additional legal  
4 process. Further, the defendant shall satisfy the court that the  
5 defendant personally, or by a designated representative, agrees to  
6 and is capable of protecting and preserving the property during the  
7 pending litigation before the court.

8 C. The plaintiff mortgagee, after filing a motion to protect  
9 and preserve property in the pending litigation before the court,  
10 and having received from the court a date, time and location to hear  
11 the motion, shall present a certified copy of the motion and hearing  
12 notice to the sheriff in the county in which the property is  
13 located. The sheriff, upon receiving a written request to post a  
14 motion and hearing notice on a property within the sheriff's  
15 jurisdiction, shall within three (3) days of the receipt of such  
16 request physically inspect the subject property and determine  
17 whether or not the property is abandoned or occupied. At the time  
18 of the physical inspection of the property, the sheriff shall either  
19 post a copy of the motion and hearing notice in a conspicuous place  
20 on the property or shall physically serve an occupant of the  
21 property as required by the provisions of this section. The sheriff  
22 shall receive a sheriff's service fee for the inspection and may  
23 designate a deputy or reserve deputy to perform the inspection and  
24 posting or service specified in this section.

1 D. Upon physical inspection, if the sheriff determines the  
2 property to be abandoned or vacated, the sheriff shall post the  
3 required motion and hearing notice on the property and make a return  
4 of inspection and posting to the plaintiff mortgagee at the address  
5 provided by the plaintiff mortgagee. In the event the property is  
6 occupied or appears to be occupied in the judgment of the sheriff,  
7 the sheriff shall attempt actual service of the motion and hearing  
8 notice on an occupant of the property as provided for service of  
9 summons, and if a person is not available to accept service or  
10 cannot be found, the sheriff shall post the motion and hearing  
11 notice in a conspicuous place on the property and make a written  
12 return of inspection and service to the plaintiff mortgagee at the  
13 address provided by the plaintiff mortgagee.

14 E. The sheriff's written return of inspection and posting or  
15 return of inspection and service shall be made within three (3) days  
16 of the date of actual inspection. The return shall be deposited  
17 into the regular U.S. mail, postage prepaid, and the return document  
18 shall certify that:

19 1. The motion and hearing notice was either served in person  
20 upon an occupant of the property or physically posted on the  
21 property and the exact date of service or posting;

22 2. A physical inspection and observation of the property was  
23 conducted; and  
24

1           3. In the best judgment and belief of the sheriff, or designee,  
2 the property was abandoned and vacated or occupied by the defendant  
3 mortgagor or a lawful tenant or other person, and any reason or  
4 belief for that determination.

5           F. The posting of the motion and hearing notice shall be deemed  
6 proper service and sufficient notice to the defendant mortgagor and  
7 all occupants of the property for purposes of holding the hearing  
8 and authorizing the court to issue an order to protect and preserve  
9 the property pending disposition of the litigation before the court.  
10 The court shall not require any additional or alternative  
11 notification to the defendant mortgagor or any occupant. Nothing  
12 shall prohibit the plaintiff mortgagee from notifying, or attempting  
13 to notify, the defendant mortgagor or any potential occupant of the  
14 subject property in another manner. If the plaintiff mortgagee  
15 elects notification by publication in addition to the posting  
16 required by this section, a copy of the motion and hearing notice  
17 shall be published at least twice in the fifteen-day period  
18 immediately preceding the hearing date in a publication of general  
19 circulation in the jurisdiction in which the property is located. A  
20 copy of the motion and hearing notice shall be sent or delivered to  
21 the defendant's legal counsel of record.

22           G. The motion posted or served shall be in the form and style  
23 recognized for pleadings filed in the official court case, and shall  
24 contain the name of the parties, court case number, the date, time

1 and place of the hearing, and a statement directing the defendant  
2 mortgagor or any occupant of the property to appear in person, or  
3 through legal counsel, or be deemed to have abandoned and vacated  
4 the property.

5 H. No hearing shall be held on a motion to protect and preserve  
6 the property subject to a suit, action or proceeding to foreclose or  
7 enforce remedies in the mortgage, contract for deed or deed of  
8 trust, unless at least fifteen (15) days have passed from the date  
9 of posting or service of the motion and hearing notice. At the  
10 hearing, the court shall hear testimony of the parties present,  
11 including any person who claims to be an occupant or tenant of the  
12 property and who is not a named litigant in the pending litigation  
13 before the court. The testimony shall include inquiry into the  
14 property's previous and current condition and the reasons or beliefs  
15 supporting or objecting to a determination that the property is  
16 abandoned or vacated. The court shall review the sheriff's written  
17 return of inspection and posting or the return of inspection and  
18 service. The court shall not require the presence of the defendant  
19 mortgagor or defendant's legal counsel before granting an order  
20 authorizing the plaintiff mortgagee to take action to protect and  
21 preserve the subject property pending the disposition of the  
22 litigation before the court.

23 1. If the defendant mortgagor, or an occupant or tenant,  
24 appears in person or through legal counsel, and the court is

1 satisfied that the defendant, or other person, is physically  
2 residing in the property, or if not occupying the property is  
3 willing and able to properly protect and preserve the property  
4 pending the litigation before the court, the motion shall be denied.  
5 However, the court shall enter an order requiring the person to  
6 protect and preserve the property under such conditions as the court  
7 may determine. Failure of the person to comply with the court order  
8 to protect and preserve the property shall be contempt of court.

9 2. If the defendant mortgagor, or an occupant or tenant, fails  
10 to appear in person, and there exists no compelling reason why the  
11 defendant mortgagor, or person, could not appear in person, and the  
12 property appears to be deteriorating or at risk of deteriorating as  
13 a result of abandonment, vandalism or any unlawful or intentionally  
14 malicious act, the court shall enter an order allowing the plaintiff  
15 mortgagee to take action to protect and preserve the property  
16 pending and in anticipation of foreclosure or other enforcement of  
17 remedies in the mortgage, contract for deed or deed of trust.

18 3. Upon issuance of an order to protect and preserve property,  
19 the court shall direct the plaintiff mortgagee to inventory, or  
20 cause to be inventoried, any personal property remaining on or about  
21 the subject property and to file such inventory in the court case  
22 file.

23 I. When a court order is issued to protect and preserve  
24 property, the plaintiff mortgagee shall be authorized to take

1 possession and secure the property pending and in anticipation of  
2 foreclosure or other enforcement of remedies in the mortgage,  
3 contract for deed or deed of trust. The taking of possession of the  
4 property authorized by court order as specified in this section  
5 shall be without any liability on the part of the plaintiff  
6 mortgagee, its agents, officers, or employees, for the dispossession  
7 of the defendant mortgagor, occupant or tenant. A writ of  
8 assistance shall be required if any person is found be to residing  
9 in or on the property subsequent to the notice and hearing and  
10 issuance of the court order to protect and preserve the property.

11 J. An order issued to protect and preserve property pursuant to  
12 the provisions of this section may be vacated and set aside at any  
13 time by the court upon motion by the defendant mortgagor, or  
14 occupant or tenant, and satisfactory proof that the property is not  
15 or was not abandoned or vacated, or was leased or rented and  
16 lawfully occupied by a person other than the defendant mortgagor at  
17 the time of issuance of the order, provided the property was not  
18 subjected to intentional malicious acts by the defendant, or person,  
19 to deface, destroy or devalue the property.

20 K. A motion filed, or court order issued, to protect and  
21 preserve the property as provided in this section shall not alter,  
22 modify, relinquish or release any right, title or interests of any  
23 party in or to any property, or alter, modify, relinquish or release  
24 any party's position, standing, claims, defenses or objections in

1 the suit, action or proceeding pending before the court to foreclose  
2 or enforce any remedy in the mortgage, contract for deed or deed of  
3 trust.

4 SECTION 2. This act shall become effective November 1, 2011.

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